



State of Utah

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Environmental Quality

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DAQ-075-05

MEMORANDUM

TO: Air Quality Board

THROUGH: Richard Sprott, Executive Secretary

FROM: Colleen Delaney, Environmental Scientist
Jim Schubach, Environmental Engineer

DATE: October 18, 2005

SUBJECT: Propose for Public Comment: Repeal and Re-enact of "R307-405, *Permits: Major Sources in Attainment or Unclassified Areas (PSD)*"; Amend "R307-110-9, *Section VIII, Prevention of Significant Deterioration*"; Repeal and Re-enact State Implementation Plan Section VIII, *Prevention of Significant Deterioration*

NSR Reform Rule

On December 31, 2002 EPA published a major revision to the federal Prevention of Significant Deterioration (PSD) program that is commonly referred to as the New Source Review (NSR) Reform Rule. All states are required to submit a State Implementation Plan revision to EPA that incorporates the NSR Reform Provisions by January 2, 2006. As discussed at the September Board meeting, Utah was on track to meet this deadline, but the uncertainty caused by the recent *State of New York vs. EPA* DC Circuit Court decision delayed the rulemaking process. We have recently heard from EPA that they do not plan to change the January 2, 2006 submittal deadline. Despite the on-going uncertainty related to the effects of the State of New York decision, we believe that it will benefit Utah to move forward with adopting the NSR reform provisions that were upheld by the Court decision. By moving forward at this time, Utah will demonstrate to EPA that we are working in good faith towards implementing the federal requirement, even though we will miss the submittal deadline by one or two months.

The NSR Reform Rule clarified applicability for determining when a modification qualified as a major modification, and provided more flexibility for certain types of changes. The major changes to the federal rule are summarized below.

1. **Applicability.** The NSR Reform Rule made several changes to the applicability provisions. First, the rule now allows sources to use any 2-year period within the last 10 years to determine baseline emissions. Second, the rule now allows sources to compare current actual emissions to projected future actual emissions to determine if an emission increase qualifies as a major modification. This test may only be used if the source agrees to monitor and report emissions to guarantee that the projected emission estimate is accurate.
2. **Plantwide applicability limits (PAL).** The rule allows a source to establish a plantwide emission cap based on actual emissions. The source can then make changes to the facility or individual emission units without requiring a PSD permit as long as emissions stay below the PAL. A PAL is created per pollutant, and can be created for an entire facility or a subset of units within a facility.

In the *State of New York vs EPA* decision, the Court remanded recordkeeping language regarding the “actual to projected actual” applicability test for further explanation of EPA’s rationale. The recordkeeping provisions in the federal regulations remain in effect until EPA addresses the remand. Additional provisions in the NSR Reform Rule related to Clean Units and Pollution Control Projects were vacated by the State of New York decision.

Incorporation by Reference

Utah’s current PSD permitting rule is found in R307-405, Permits: *Prevention of Significant Deterioration of Air Quality (PSD)*. A number of definitions that apply to this rule are found in R307-101-2, and some additional requirements relating to public comment and relaxation of limitations are found in R307-401, *Permits: Notice of Intent and Approval Order*. These rules follow the federal requirements closely, although there are minor differences to adapt the requirements to Utah’s regulatory program and to improve grammatical errors in the federal language.

We have discovered with past rulemakings that implementation of federal requirements is more straightforward if the federal requirements are incorporated by reference rather than repeating the requirements in Utah’s rules. Sources that operate in many states can easily determine any differences between Utah’s requirements and those in other states. In addition, when EPA issues interpretive guidance it is very straightforward to apply the guidance to Utah’s program. Finally, incorporation by reference simplifies EPA’s review and approval process. For these reasons, we are recommending repealing the existing PSD rule, R307-405 and then re-enacting the rule as an incorporation by reference of 40 CFR 52.21. The following provisions are not included in this incorporation by reference.

1. The routine maintenance, repair and replacement provisions that were adopted by EPA on October 27, 2003 and then stayed by the DC Circuit Court of Appeals on December 23, 2003, pending appeal.
2. Clean Unit and Pollution Control Project provisions that were vacated by the DC Circuit Court of Appeals on June 4, 2005.
3. Numerous outdated provisions in the federal PSD rule that are no longer applicable.

We have made changes to the incorporated language to adapt the federal language to Utah's regulatory program. Some sections of the federal regulation could not be easily incorporated by reference, such as the designation of areas within the state and the public comment process. These requirements are included in the rule text.

Other Changes to the Rule

Incorporation by reference will result in other, minor, changes to the PSD requirements due to small differences between the federal language in 40 CFR 52.21 and the current PSD rule. We do not believe that any of these other changes will be substantive because Utah is implementing the PSD program according to EPA's guidelines.

In addition, some provisions that are in Utah's current PSD rule, R307-405, need to be moved to the State Implementation Plan because the provisions are commitments by the State of Utah rather than enforceable rule requirements. These provisions include the process that the Board will follow to reclassify areas within the state for purposes of PSD, including consultation with the Governor and the Utah Legislature. The PSD SIP was also rewritten to provide an overview of the PSD permitting program.

Staff Recommendation: We recommend repealing the existing rule, R307-405, "*Permits: Major Sources in Attainment or Unclassified Areas (PSD)*" and re-enacting the draft rule language that is shown in the attached rule, R307-405. This draft rule incorporates the federal PSD permitting rule in 40 CFR 52.21 by reference, thereby making the NSR Reform provisions effective in Utah.

We recommend amending R307-101-2 to remove several definitions that are incorporated by reference in R307-405.

Finally, we recommend repealing and then re-enacting the draft State Implementation Plan "Section VIII, Prevention of Significant Deterioration" that is attached to this memo.